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HOUSE BILL 619

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR EXPENDITURES FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT BY PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Efficient Use of Energy Act".

Section 2. [NEW MATERIAL] FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility

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1 consumers;

2 B. energy efficiency and load management in New
3 Mexico are resources that are currently underutilized;

4 C. public and municipal utility investment in
5 energy efficiency and load management presents opportunities to
6 increase New Mexico's energy security, protect New Mexico
7 energy consumers from price increases, preserve the state's
8 natural resources and pursue an improved environment in New
9 Mexico;

10 D. investment in energy efficiency and load
11 management by public utilities subject to public regulation
12 commission oversight in accordance with the Efficient Use of
13 Energy Act can bring significant economic benefits to New
14 Mexico;

15 E. it serves the public interest to support public
16 utility investments in cost-effective energy efficiency and
17 load management by removing any regulatory disincentives that
18 may exist and allowing recovery of costs for reasonable and
19 prudently incurred expenses of energy efficiency and load
20 management programs;

21 F. investments in energy efficiency and
22 implementation of utility energy efficiency programs for
23 economically disadvantaged New Mexicans, in conjunction with
24 low-income weatherization programs managed by the state of New
25 Mexico, will reduce the burden of utility costs on low-income

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1 customers;

2 G. public utility investments in cost-effective
3 energy efficiency and load management can provide significant
4 reductions in greenhouse gas emissions, regulated air
5 emissions, water consumption and natural resource depletion,
6 and can avoid or delay the need for more expensive generation,
7 transmission and distribution infrastructure;

8 H. New Mexico should participate in regional
9 efforts to reduce energy consumption by twenty percent by 2020
10 through programs to reduce energy consumption;

11 I. public utility resource planning to meet New
12 Mexico's energy service needs should be identified and
13 evaluated on an ongoing basis in accordance with the principles
14 of integrated resource planning; and

15 J. it is necessary and appropriate to allow
16 distribution cooperative utilities to participate in the
17 implementation of energy efficiency programs in ways that
18 differ from rules applicable to public utilities that are not
19 customer owned.

20 Section 3. [NEW MATERIAL] POLICY.--It is the policy of
21 the Efficient Use of Energy Act that public utilities,
22 distribution cooperative utilities and municipal utilities
23 include cost-effective energy efficiency and load management
24 investments in their energy resource portfolios and that any
25 regulatory disincentives that may exist to public utility

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1 investments in cost-effective energy efficiency and load
2 management are eliminated.

3 Section 4. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Efficient Use of Energy Act:

5 A. "commission" means the public regulation
6 commission;

7 B. "cost-effective" means that the program being
8 evaluated satisfies the total resource cost test;

9 C. "distribution cooperative utility" means a
10 utility with distribution facilities organized as a rural
11 electric cooperative pursuant to Laws 1937, Chapter 100 or the
12 Rural Electric Cooperative Act or similarly organized in other
13 states;

14 D. "energy efficiency" means measures, including
15 energy conservation measures, or programs that target consumer
16 behavior, equipment or devices to result in a decrease in
17 consumption of electricity and natural gas without reducing the
18 amount or quality of energy services;

19 E. "large customer" means a utility customer at a
20 single, contiguous field, location or facility, regardless of
21 the number of meters at that field, location or facility, with
22 electricity consumption greater than seven thousand
23 megawatt-hours per year or natural gas use greater than three
24 hundred sixty thousand decatherms per year;

25 F. "load management" means measures or programs

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1 that target equipment or devices to result in decrease peak
2 electricity demand or shift demand from peak to off-peak
3 periods;

4 G. "public utility" means a public utility that is
5 not also a distribution cooperative utility; and

6 H. "total resource cost test" means a standard that
7 is met if, for an investment in energy efficiency or load
8 management, on a life-cycle basis the avoided supply-side
9 monetary costs are greater than the monetary costs of the
10 demand-side programs borne by both the utility and the
11 participants.

12 Section 5. [NEW MATERIAL] COMMISSION--ENERGY EFFICIENCY
13 AND LOAD MANAGEMENT PROGRAMS.--

14 A. Pursuant to the findings and purpose of the
15 Efficient Use of Energy Act, the commission shall consider
16 public utility investments in cost-effective energy efficiency
17 and load management to be an acceptable use of ratepayer money.

18 B. The commission shall direct public utilities to
19 evaluate and implement cost-effective programs that reduce
20 energy demand and consumption.

21 C. Before the commission approves an energy
22 efficiency and load management program for a public utility, it
23 must find that the portfolio of programs is cost-effective and
24 designed to provide every affected customer class with the
25 opportunity to participate and benefit economically. The

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1 commission shall determine the cost-effectiveness of energy
2 efficiency and load management measures using the total
3 resource cost test.

4 D. The commission shall act expeditiously on public
5 utility requests for approval of energy efficiency or load
6 management programs.

7 E. Public utilities shall obtain commission
8 approval of energy efficiency and load management programs
9 before they are implemented. Public utilities proposing new
10 energy efficiency and load management programs shall, before
11 seeking commission approval, solicit non-binding
12 recommendations on the design and implementation of the
13 programs from commission staff, the attorney general, the
14 energy, minerals and natural resources department and other
15 interested parties.

16 F. The commission shall identify any disincentives
17 or barriers that may exist for public utility expenditures on
18 energy efficiency and load management and, if found, ensure
19 that they are eliminated in order that public utilities are
20 financially neutral in their preference for acquiring demand or
21 supply-side utility resources.

22 Section 6. [NEW MATERIAL] COST RECOVERY.--

23 A. A public utility that undertakes cost-effective
24 energy efficiency and load management programs shall recover
25 the costs of all the programs implemented after the effective

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1 date of the Efficient Use of Energy Act through an approved
2 tariff rider. Program costs may be deferred for future
3 recovery through creation of a regulatory asset, provided that
4 the deferred recovery does not cause the tariff rider to exceed
5 the limits imposed by this section. The tariff rider for any
6 utility customer shall not exceed the lower of one and one-half
7 percent of that customer's bill or seventy-five thousand
8 dollars (\$75,000) per year except that, upon application by a
9 public utility with the advice and consent of the entity
10 designated by law to represent residential and commercial
11 utility customers, the commission may approve a tariff rider in
12 excess of one and one-half percent for customers other than
13 large customers and may approve a tariff rider in excess of the
14 lower of one and one-half percent or seventy-five thousand
15 dollars (\$75,000) per year for a large customer that consents
16 to such a rider. The commission shall approve such
17 applications upon finding that the proposed energy efficiency
18 and load management programs are cost-effective and that the
19 cost recovery proposal is just and reasonable.

20 B. The tariff rider shall provide for the recovery,
21 on a monthly basis or otherwise, of all reasonable costs of
22 approved energy efficiency and load management programs.

23 C. A tariff rider proposed by a public utility to
24 fund approved energy efficiency and load management programs
25 shall go into effect thirty days after filing, unless suspended

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1 by the commission for a period not to exceed one hundred eighty
2 days. If the tariff rider is not approved or suspended within
3 thirty days after filing, it shall be deemed approved as a
4 matter of law. If the commission has not acted to approve or
5 disapprove the tariff rider by the end of an ordered suspension
6 period, it shall be deemed approved as a matter of law. The
7 commission shall approve utility reconciliations of the tariff
8 rider annually based upon recovery of the reasonable costs of
9 the utility's programs.

10 D. The commission shall ensure that there are no
11 cross-subsidies between a public utility's energy efficiency
12 and load management activities and the public utility's supply-
13 side activities and shall ensure that the existence of a tariff
14 rider does not permit a public utility to earn an excessive
15 rate of return.

16 Section 7. [NEW MATERIAL] ALTERNATIVE ENERGY EFFICIENCY
17 PROVIDER.--With a public utility's consent, the commission may
18 allow for an alternative entity to provide ratepayer-funded
19 energy efficiency and load management to customers of that
20 public utility.

21 Section 8. [NEW MATERIAL] MEASUREMENT AND VERIFICATION.--
22 The public utility shall submit to the commission an annual
23 report, prepared by an independent program evaluator, that
24 provides information relating to the actions taken by the
25 public utility to comply with the standards of the Efficient

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1 Use of Energy Act. The reports shall include documentation of
2 program expenditures, measurement and verification of savings
3 resulting from programs, evaluation of the cost-effectiveness
4 of expenditures, evaluation of the cost-effectiveness of self-
5 direct programs and any other information the commission may
6 require pursuant to its rulemaking authority. The commission
7 may direct a utility to modify or terminate a particular energy
8 efficiency or load management program if, after an adequate
9 period for implementation of the program, the commission
10 determines the program is not sufficiently meeting its goals
11 and purposes. Termination of a program or programs shall be
12 accomplished in a manner that allows the utility to fully
13 recover its reasonable and prudent program costs.

14 Section 9. [NEW MATERIAL] SELF-DIRECTED PROGRAMS FOR
15 CUSTOMERS--EXEMPTIONS.--

16 A. A large customer shall receive approval for a
17 credit for and equal to the expenditures that customer has made
18 at its facilities on and after January 1, 2005 toward
19 cost-effective energy efficiency and load management. To
20 receive approval, the large customer must demonstrate to the
21 reasonable satisfaction of the utility or self-direct program
22 administrator that its expenditures are cost-effective. Once
23 approved, the credit may be used to offset up to seventy
24 percent of the tariff rider authorized by the Efficient Use of
25 Energy Act until the credit is exhausted. Eligible

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1 expenditures shall have a simple payback period of more than
2 one year but less than seven years. Projects that have
3 received rebates, financial support or other substantial
4 program support from a utility are not eligible for a credit.

5 B. A large customer shall receive approval for an
6 exemption to paying seventy percent of the tariff rider if the
7 customer demonstrates to the reasonable satisfaction of the
8 utility or self-direct program administrator that it has
9 exhausted all cost-effective energy efficiency measures at its
10 facility. As used in this section, "cost-effective" means all
11 measures with a simple payback period of more than one year but
12 less than seven years.

13 C. Large customers shall seek and receive approval
14 for credits and exemptions under this provision from the
15 utility or a commission-approved self-direct program
16 administrator. Approvals or disapprovals by the utility or
17 administrator shall be subject to commission review. Any
18 credit not fully utilized in the year it is received shall
19 carry over to subsequent years. Implementation of credits
20 shall be designed to minimize utility administrative costs.

21 D. Except as otherwise provided in this section,
22 projects, expenditures and exemptions under this section shall
23 be evaluated by an independent program evaluator using the same
24 measurement and verification standards applying to utility
25 programs, subject to appropriate protections for

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1 confidentiality, by the utility or a commission-approved self-
2 direct program administrator and reported in the annual report
3 to the commission pursuant to the Efficient Use of Energy Act.

4 Section 10. [NEW MATERIAL] INTEGRATED RESOURCE

5 PLANNING.--Pursuant to the commission's rulemaking authority,
6 public utilities supplying electric or natural gas service to
7 customers shall periodically file an integrated resource plan
8 with the commission. Utility integrated resource plans shall
9 evaluate renewable energy, energy efficiency, load management,
10 distributed generation and conventional supply-side resources
11 on a consistent and comparable basis and take into
12 consideration risk and uncertainty of fuel supply, price
13 volatility and costs of future environmental regulations in
14 order to identify the most cost-effective portfolio of
15 resources to supply the energy needs of customers. The
16 preparation of resource plans shall incorporate a public
17 advisory process. Nothing in this section shall prohibit
18 public utilities from implementing cost-effective energy
19 efficiency and load management programs and the commission from
20 approving public utility expenditures on energy efficiency
21 programs and load management programs prior to the commission
22 establishing rules and guidelines for integrated resource
23 planning. The commission may exempt public utilities with
24 fewer than five thousand customers and distribution-only public
25 utilities from the requirements of this section.

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1 Section 11. ~~[NEW MATERIAL]~~ DISTRIBUTION COOPERATIVE
2 UTILITIES.--

3 A. Distribution cooperative utilities shall
4 periodically examine the potential to assist their customers in
5 reducing energy consumption or peak electricity demand in a
6 cost-effective manner. Based on these studies, distribution
7 cooperative utilities shall implement cost-effective energy
8 efficiency and load management programs that are economically
9 feasible and practical for their members and customers.
10 Approval for such programs shall reside with the governing body
11 of each distribution cooperative utility and not with the
12 commission.

13 B. Each distribution cooperative utility shall file
14 with the commission concurrently with its annual report, a
15 report that describes all of the distribution cooperative
16 utility's programs or measures that promote energy efficiency,
17 conservation or load management. The report shall set forth
18 the costs of each of the programs or measures for the previous
19 calendar year and the resulting effect on the consumption of
20 electricity. In offering or implementing energy efficiency,
21 conservation or load management programs, a distribution
22 cooperative utility shall attempt to minimize any cross-
23 subsidies between customer classes.

24 C. Each distribution cooperative utility shall
25 include in the report required by Subsection B of this section

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1 a description of all programs or measures to promote energy
2 efficiency, conservation or load management that are planned
3 and the anticipated date for implementation.

4 D. Costs resulting from programs or measures to
5 promote energy efficiency, conservation or load management may
6 be recovered by the distribution cooperative utility through
7 its general rates. In requesting approval to recover such
8 costs in general rates, the distribution cooperative utility
9 may elect to use the procedure set forth in Subsection G of
10 Section 62-8-7 NMSA 1978.

11 Section 12. Section 62-3-3 NMSA 1978 (being Laws 1967,
12 Chapter 96, Section 3, as amended) is amended to read:

13 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
14 used in the Public Utility Act:

15 A. "affiliated interest" means a person who
16 directly or indirectly, through one or more intermediaries,
17 controls or is controlled by or is under common control with a
18 public utility. Control includes instances where a person is
19 an officer, director, partner, trustee or person of similar
20 status or function or owns directly or indirectly or has a
21 beneficial interest in ten percent or more of any class of
22 securities of a person;

23 B. "commission" means the public regulation
24 commission;

25 C. "commissioner" means a member of the commission;

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1 D. "municipality" means a municipal corporation
2 organized under the laws of the state, and H-class counties;

3 E. "person" means an individual, firm, partnership,
4 company, rural electric cooperative organized under Laws 1937,
5 Chapter 100 or the Rural Electric Cooperative Act, corporation
6 or lessee, trustee or receiver appointed by any court.

7 "Person" does not mean a class A county as described in Section
8 4-36-10 NMSA 1978 or a class B county as described in Section
9 4-36-8 NMSA 1978. "Person" does not mean a municipality as
10 defined in this section unless the municipality has elected to
11 come within the terms of the Public Utility Act as provided in
12 Section 62-6-5 NMSA 1978. In the absence of voluntary election
13 by a municipality to come within the provisions of the Public
14 Utility Act, the municipality shall be expressly excluded from
15 the operation of that act and from the operation of all its
16 provisions, and no such municipality shall for any purpose be
17 considered a public utility;

18 F. "securities" means stock, stock certificates,
19 bonds, notes, debentures, mortgages or deeds of trust or other
20 evidences of indebtedness issued, executed or assumed by a
21 utility;

22 G. "public utility" or "utility" means every person
23 not engaged solely in interstate business and, except as stated
24 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
25 operate, lease or control:

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1 (1) any plant, property or facility for the
2 generation, transmission or distribution, sale or furnishing to
3 or for the public of electricity for light, heat or power or
4 other uses;

5 (2) any plant, property or facility for the
6 manufacture, storage, distribution, sale or furnishing to or
7 for the public of natural or manufactured gas or mixed or
8 liquefied petroleum gas for light, heat or power or other uses;
9 but the term "public utility" or "utility" shall not include
10 any plant, property or facility used for or in connection with
11 the business of the manufacture, storage, distribution, sale or
12 furnishing of liquefied petroleum gas in enclosed containers or
13 tank truck for use by others than consumers who receive their
14 supply through any pipeline system operating under municipal
15 authority or franchise and distributing to the public;

16 (3) any plant, property or facility for the
17 supplying, storage, distribution or furnishing to or for the
18 public of water for manufacturing, municipal, domestic or other
19 uses; provided, however, nothing contained in this paragraph
20 shall be construed to apply to irrigation systems, the chief or
21 principal business of which is to supply water for the purpose
22 of irrigation;

23 (4) any plant, property or facility for the
24 production, transmission, conveyance, delivery or furnishing to
25 or for the public of steam for heat or power or other uses;

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1 ~~[or]~~

2 (5) any plant, property or facility for the
3 supplying and furnishing to or for the public of sanitary
4 sewers for transmission and disposal of sewage produced by
5 manufacturing, municipal, domestic or other uses; provided that
6 the terms "public utility" or "utility" as used in the Public
7 Utility Act do not include any utility owned or operated by a
8 class A county as described in Section 4-36-10 NMSA 1978 either
9 directly or through a corporation owned by or under contract
10 with such a county; or

11 (6) any plant, property or facility for the
12 sale or furnishing to or for the public of goods or services to
13 reduce the consumption of or demand for electricity or natural
14 gas, and is either a public utility under the definitions found
15 in Paragraphs (1) or (2) of this subsection, or is an
16 alternative energy efficiency provider as described in Section
17 7 of the Efficient Use of Energy Act;

18 H. "rate" means every rate, tariff, charge or other
19 compensation for utility service rendered or to be rendered by
20 a utility and every rule, regulation, practice, act,
21 requirement or privilege in any way relating to such rate,
22 tariff, charge or other compensation and any schedule or tariff
23 or part of a schedule or tariff thereof;

24 I. "renewable energy" means electrical energy
25 generated by means of a low- or zero-emission generation

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1 technology that has substantial long-term production potential
2 and may include, without limitation, solar, wind, hydropower,
3 geothermal, landfill gas, anaerobically digested waste biomass
4 or fuel cells that are not fossil fueled. "Renewable energy"
5 does not include fossil fuel or nuclear energy;

6 J. "service" or "service regulation" means every
7 rule, regulation, practice, act or requirement relating to the
8 service or facility of a utility;

9 K. "Class I transaction" means the sale, lease or
10 provision of real property, water rights or other goods or
11 services by an affiliated interest to a public utility with
12 which it is affiliated or by a public utility to its affiliated
13 interest;

14 L. "Class II transaction" means:

15 (1) the formation after May 19, 1982 of a
16 corporate subsidiary by a public utility or a public utility
17 holding company by a public utility or its affiliated interest;

18 (2) the direct acquisition of the voting
19 securities or other direct ownership interests of a person by a
20 public utility if such acquisition would make the utility the
21 owner of ten percent or more of the voting securities or other
22 direct ownership interests of that person;

23 (3) the agreement by a public utility to
24 purchase securities or other ownership interest of a person
25 other than a nonprofit corporation, contribute additional

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1 equity to, acquire additional equity interest in or pay or
2 guarantee any bonds, notes, debentures, deeds of trust or other
3 evidence of indebtedness of any such person; provided, however,
4 that a public utility may honor all agreements entered into by
5 such utility prior to May 19, 1982; or

6 (4) the divestiture by a public utility of any
7 affiliated interest that is a corporate subsidiary of the
8 public utility;

9 M. "corporate subsidiary" means any person ten
10 percent or more of whose voting securities or other ownership
11 interests are directly owned by a public utility; and

12 N. "public utility holding company" means an
13 affiliated interest that controls a public utility through the
14 direct or indirect ownership of voting securities of that
15 public utility."

16 Section 13. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.